

**Firestone & Kempton Petition for Rehearing and Reconsideration**  
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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF INTEGRATED RESOURCE	)	
PLANNING FOR THE PROVISION OF	)	
STANDARD OFFER SUPPLY SERVICE BY	)	
DELMARVA POWER & LIGHT COMPANY UNDER	)	
26 DEL. C. § 1007(c) & (d): REVIEW	)	PSC DOCKET NO. 06-241
AND APPROVAL OF THE REQUEST FOR	)	
PROPOSALS FOR THE CONSTRUCTION OF	)	
NEW GENERATION RESOURCES UNDER 26	)	
DEL. C. § 1007(d)	)	
(OPENED JULY 25, 2006)	)	

**Petition for Rehearing and Reconsideration**

NOW COMES, Jeremy Firestone and Willett Kempton, pursuant to Commission Rule 34(b):

1. This docket was initiated on August 8, 2006, pursuant to Commission Order 7003.
2. Jeremy Firestone and Willett Kempton are “parties” within the meaning of Commission Rules 2 and 34(b) and persons “affected” within the meaning of 26 Del. C. § 509.
3. On or about August 1, 2006, Delmarva Power & Light Company (Delmarva) submitted a draft request for proposal (RFP) related to the above-captioned matter.
4. On August 18, 2006, Jeremy Firestone and Willett Kempton participated in a Public Workshop in the above-referenced matter, and provided oral comments into the record.
5. On or about August 23, 2006, Jeremy Firestone and Willett Kempton submitted timely initial comments in writing in the above-captioned matter.
6. By email dated September 28, 2006, Robert Howatt, lead Commission staff member in this matter indicated that the parties would have until October 6, 2006 to file comments on the redline RFP.

7. On or about October 2, 2006, Jeremy Firestone and Willett Kempton submitted timely reply comments in the above-captioned matter.
8. On or about October 6, 2006, Jeremy Firestone and Willett Kempton submitted timely redline RFP comments in the above-captioned matter.
9. Order 7003 provided that “the Commission will hear oral argument and take final action on the Request for Proposals submitted by Delmarva Power & Light Company on October 17, 2006 at its regularly scheduled meeting.”
10. On October 17, 2006, the Commission, pursuant to its order heard oral argument and took “final action” on a number of issues in individual votes related to the Request for Proposals.
11. Jeremy Firestone and Willett Kempton attended the October 17, 2006 hearing and engaged in oral argument before the Commission.
12. A draft Order was prepared by the Commission Staff and posted on the Commission website on October 30, 2006.
13. On October 30, 2006, Jeremy Firestone and Willett Kempton submitted Objections to Entry of the draft Order.
14. On October 30, 2006, the transcript from the October 17, 2006 hearing was made available to the parties.
15. In pertinent part, in their Objections, Jeremy Firestone and Willett Kempton contended that (a) the procedure by which the Commission and DNREC took “final action” at the October 17 hearing was irregular and illegal; (b) that the Staff-prepared draft Order did not reflect the October 17 proceedings or the “final action” taken there in that it suggested that a series of individual votes took place on the points allocation, when in fact, only one vote was taken; and (c) that the draft Order did not acknowledge that we submitted timely Redline RFP comments; Nor had those comments been posted online as part of the docket in this matter.
16. As stated in the Objections: “Given the fact that the transcript of the proceedings was not made available until the day before the consideration of this order, the revised RFP was likewise not available until today, and that other interested persons might subsequently communicate views on this matter to the PSC, we respectfully reserve the right to amend this objection as well as to file a petition for rehearing and reconsideration.”
17. The Commission considered the Staff-prepared draft Order and the Objections at its regularly scheduled meeting on October 31, 2006.

18. On October 31, 2006, the Commission staff belatedly included our Redline RFP comments in the docket of this proceeding.
19. On October 31, 2006, the Commission staff posted a modified Staff-prepared draft Order on the Commission website.
20. Willett Kempton attended the October 31<sup>st</sup> proceeding and orally presented our objections.
21. Despite our objections, the Commission entered the modified Staff-prepared draft Order.
22. On November 2, 2006, Karen J. Nickerson, Secretary to the Commission emailed to us PSC Order No. 7066.
23. On November 3, 2006, Karen J. Nickerson, Secretary to the Commission emailed to us PSC Order No. 7066, correcting her earlier email and indicating that DNREC also adopted the Order.
24. The November 3, 2006 email provided that “the date of service shall be deemed the date of this e-mail.”
25. In our Redline RFP comments we argued that “Weighting price more than the environment suggests that a \$.01/kWh reduction in price is more highly valued than a \$.01/kWh environmental benefit. There is no rational basis for this belief, however, and certainly no rationale has been put forward by Delmarva or the private consultant. On the contrary, there is reason to believe that the value assigned to environmental benefits is greater than price, since only Delmarva ratepayers will benefit from price, while a much greater number of people will benefit from the reduction in environmental impacts. Not only will all of Delaware residents benefit from reductions in priority pollutants, but regionally, others will benefit from non-CO<sub>2</sub> producing production given the RGGI, and globally, there will be benefits from both non-CO<sub>2</sub> production and non-SO<sub>2</sub> production. Thus, if anything, the weights on price and on reductions in environmental impacts should be reversed, and in any event, the weight on price should not be more than the weight on reductions in environmental impact.”
26. In our Redline RFP comments we also argued that “BTU and Carbon Taxes should be amortized by the bidders that generate CO<sub>2</sub>; Not passed on to Delaware Ratepayers.”
27. In our Redline RFP comments, we cited studies by the University of Chicago, US Dept of Energy, US Energy Information Agency, California Public Utilities Commission, and, prices in the European market, supporting our estimate that: “during

approximately mid-life of the plant, we should expect an IGCC coal plant to increase in cost by: \$20 - \$44 /MWh over the “expected price” Or for a mix of fossil plants, an increase of: 35% - 46% over the “expected price.” And we concluded “Whether the low or high end of these real costs are realized, these increases clearly do not constitute price stability. Nor should they be borne by the ratepayers unless the costs are first internalized in a transparent bid that is ultimately approved, with risk borne by the bidder, which can be insured against.”

28. The Redline RFP comments were not considered by the Commission or DNREC prior to taking “final action” at the October 17, 2006 hearing.
29. The Redline RFP comments were not considered by the Commission or DNREC prior to entry of Order No. 7066.
30. A review of the transcript of the October 17, 2006 transcript reveals that in addition to indicating that votes were taken on issues that did not occur, Order No. 7066 contains in an apparent attempt to buttress the non-existent votes staff-generated rationalizations for Commission and DNREC “final action” decisions that were made on October 17, 2006.
31. For example, Order No. 7066 provides *inter alia*
  - a. “We agree with and approve the IC’s recommendation. We acknowledge the EURCSA’s directive to give serious consideration to new and innovative technologies, but we also have to remember that in the end we need to supply power to customers. The most innovative technology is of no use if it cannot generate the power needed to serve customers. Thus, we agree that reliability should be a consideration in the assessment of bids. We disagree with NRG’s proposed allocation of the points for this factor, as it addresses the innovativeness of the technology to the exclusion of the reliability of the technology. (Unanimous).” ¶ 179.
  - b. “We agree with and approve the IC’s recommendations on this issue. We believe that Bluewater’s concerns are addressed by noting that single fuel-source projects that add diversity and reduce price volatility will be given the greatest weight in the scoring for this category. (Unanimous).” ¶ 183.
  - c. “In this regard, we observe that five points is reasonable in combination with the other factors addressing the bidder’s ability to complete their proposals and the ‘Viability’ category. (Unanimous).” ¶ 189.
  - d. “We agree with and approve the IC’s recommendation. Although the EURCSA does not explicitly identify this factor, it is, as the IC points out, fundamental to determining the realistic chances that a project will actually be

completed. The EURCSA is designed to produce *operating*, not abstract, projects that will further its goals. (Unanimous).” ¶ 193.

- e. “We agree with and approve the IC’s recommendations on this issue. We think that the IC’s explanations are logical and more appropriate in the evaluative process than simply adding up the number of changes that a bidder proposes to make to the standard PPA. It is not the quantity of the changes that are important, but rather the quality, (Unanimous). ¶ 195.

- 32. The staff-generated statements referenced in the preceeding paragraph are post-hoc rationalizations for “final actions” that have already been made by the Commission and DNREC.
- 33. In paragraph 186, Order No. 7066 inaccurately states that: “No party took issue with the IC’s recommendations” regarding the assignment of 5 points to site development.
- 34. We had argued that site feasibility components (e.g., operation date and certainty, site development, bidder experience, and project financeability) should not be included in the point analysis at all, and if they were included they should receive only a cumulative eight points (Initial Comments, p. 5) as opposed to the eighteen points allocated to these factors by the Independent Consultant (IC).
  - a. “Moreover, the private consultant weighs viability (e.g., operation date and certainty, site development, bidder experience, and project financeability) at a cumulative 18 points, which is more than the points that can be awarded under reduction in environmental impact and weights that combined factor six times as much as innovative technology. While no one is arguing that a bid should be accepted that is not viable, bid viability should be used solely as threshold requirement that eliminates unfeasible bids. It should then not further enter the point allocation as it may end up skewing the bid selection.” Reply Comments, p. 4-5.

**WHEREFORE**, we respectfully request that this Honorable Commission and DNREC to:

- 1. **Grant** this Petition for Rehearing and Reconsideration.
- 2. **Set** a hearing on the Petition.
- 3. **Strike** the post-hoc rationalizations from Order No. 7066 and insert in their place statements to the effect that “For the reasons expressed at the October 17, 2006 hearing.”

4. **Strike** from Order No. 7066 all votes that never took place at the October 17, 2006.
5. **Consider** the substance of the arguments made in the Redline RFP comments.
6. **Modify** Order No. 7066 in accordance with the arguments made in the Redline RFP comments. Specifically,
  - a. The weights on price and reductions in environmental impacts should be rationally based and adjusted so that the weight on reductions in environmental impacts is greater than the weight on price.
  - b. BTU and Carbon Taxes that generate CO<sub>2</sub> should be amortized.
7. **Grant such other relief as is appropriate and just.**

Respectfully submitted,

Jeremy Firestone and Willett Kempton (on their own behalf)

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